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In re Application of
HECHT
U.S. Application No.: 09/355,117
PCT No.: PCT/EP98/00295
Int. Filing Date: 20 January 1998
Priority Date: 20 January 1997
Attorney Docket No.: ANWAL.004APC
For: AN OPTICAL WAVE-GUIDE CABLE
NETWORK

DECISION ON PETITION

UNDER 37 CFR 1.137(b)

This decision is in response to applicant's "Petition to Revive Abandoned Application" filed in the United States Patent and Trademark Office (USPTO) originally on 15 October 1999 and again on 28 April 2003. Applicant has paid the \$605.00 small entity petition fee.

BACKGROUND

On 20 January 1998, applicant filed international application PCT/EP98/00295, which claimed priority of an earlier application filed 20 January 1997. A Demand for international preliminary examination, in which the United States was elected was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 20 July 1999.

On 20 July 1999, applicant filed a transmittal letter for entering the U.S. national stage under 35 U.S.C. 371 accompanied by: partial payment of the U.S. basic national fee; a copy of the published international application; a translation of the international application into English; an Information Disclosure Statement and an executed combined declaration and power of attorney of the inventor.

On 13 August 1999, applicant was mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) informing applicant that the present application was abandoned as to the United States for failure to pay the full, U.S. Basic National fee by thirty months from the earliest claimed priority date.

On 15 October 1999, applicant filed a petition to revive the present application accompanied by a check in the amount of \$372.00 as payment of the remainder of the Basic U.S. National fee and a check in the amount of \$605.00 as payment of the petition to revive fee.

On 28 April 2003, applicant filed the present petition to revive pursuant to 37 CFR 1.137(b) accompanied by a copy of stamped postcard receipt showing a USPTO datestamp of 15 October 1999.

DISCUSSION

A review of the application file finds the original petition contained therein.

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (1), the proper response was payment of the full U.S. Basic National fee. A review of the fee record for the present application shows that applicant provided this payment with the petition on 15 October 1999.

As to Item (2), applicant has included the small entity fee of \$605.00 along with the present petition.

With regard to Item (3), applicant's statement that, "The failure of paying the full national fee was unintentional" is being interpreted to mean that the entire delay in paying the full national fee from the due date for the payment until the filing of a grantable petition pursuant to this paragraph was unintentional. If this is an incorrect reading of applicant's statement applicant should contact the Office of PCT Legal Administration immediately. Applicant's statement and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied. However, it is noted that the filed combined declaration and power of attorney lists the filing date for the priority application as "January 20, 1998." The filing date is in fact 20 January 1997. This mistake does not render the declaration non-compliant for the purposes of 35 U.S.C. 371, however, applicant should file a declaration with the correct priority information as soon as possible in order to assure that the USPTO record-keeping and databases are correct.

CONCLUSION

For the reasons stated above, applicant's petition to revive under 37 CFR 1.137(b) is **GRANTED**.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision. The 35 U.S.C. 371(c) date is **15 October 1999**.



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